

It is always a subject of regret when the court finds itself under an obligation to decide causes, upon grounds not going to the merits, but this regret, of course, cannot have the effect to induce it to overthrow established rules, and, more especially, when those rules are so essential to prevent protracted and ruinously expensive litigation. In the language of Lord Eldon, in 16 *Vez.*, 351, "the court must not be induced by any persuasion as to the fact that the plaintiff had originally a demand, which he could clearly have sustained, to break down rules established to prevent general mischief at the expense even of particular injury." The petition must be dismissed.

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Wm. M. ADDISON for the petition.

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[No appeal was prosecuted in this case.]

JEHU BROWN  
vs.  
ELIZABETH BROWN. } DECEMBER TERM, 1846.

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[DIVORCE—CONSTRUCTION OF ACTS OF ASSEMBLY—DEED OF SEPARATION—EFFECTS OF.]

JURISDICTION in cases of application for divorces, was conferred upon the equity tribunals of this state, by the act of 1841, chapter 262, to which two supplements have been passed, one in 1843, chapter 287, and the other in 1844, chapter 306.

The 2d sec. of the act of 1841, authorizes the court to decree a divorce *a vinculo*, "where the party complained against, has abandoned the party complaining, and has remained absent from the state for the space of *five years*." The act of 1844, repeals "all such parts of the 2d sec. of the original act, as requires an absence from the state for *five years*," with a proviso, that no such decree shall be passed on account of abandonment, unless such abandonment has continued uninterruptedly for at least three years, and is deliberate and final, and the separation of the parties beyond any reasonable expectation of reconciliation. **HELD—**

That by the latter act, the legislature clearly intended to *abridge* the period of absence from the state required by the former, but that it is not clear, that they intended to *dispense* with such absence altogether, as one of the ingredients constituting the ground for a divorce *a vinculo*.